

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civil No. 2:07-13227
Hon. John Feikens
Magistrate Steven D. Pope

ALDO RINALDO QUADRINI and
LOUISE ANNE QUADRINI, d/k/a
LOUISE A. GILLETTE,

Defendants.

/

DEFENDANTS' RESPONSE TO UNITED STATES'
MOTION TO STRIKE AFFIRMATIVE DEFENSES

NOW COME Defendants, ALDO RINALDO QUADRINI and LOUISE ANNE QUADRINI, by and through their attorney, GERALD L. DECKER, and for their Response to United States' Motion to Strike Affirmative Defenses say as follows:

1. Defendants agree to strike the affirmative defense regarding the application of the Rooker-Feldman Doctrine.
2. As to the balance of the affirmative defenses, Defendants assert that the United States of America has not carried their burden of proof as required by Brown & Williamson Tobacco Corporation v. United States, 201 F2d 819, 821 (6th Cir. 1953) and FTC v. Mazzoni and Sons, Inc., 2007 US Dist. Lexis 60635, Mark Bryant, et al. v. Ferrellgas, Inc., et al.,

2007 US Dist. Lexis 24745, and Barbrasure Beattie and James Sovis v. Centurytel, Inc., 234

F RD 160 (Ed. Mich 2006).

Respectfully submitted,

/s/ Gerald L. Decker
GERALD L. DECKER (P 31485)
Attorney for Defendants
42700 Schoenherr Rd., Ste. 3
Sterling Heights, MI 48313
(586) 532-1122
gldeckerlaw@aol.com

Dated: November 21, 2007

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civil No. 2:07-13227

Hon. John Feikens

Magistrate Steven D. Pope

ALDO RINALDO QUADRINI and
LOUISE ANNE QUADRINI, d/k/a
LOUISE A. GILLETTE,

Defendants.

/

BRIEF IN SUPPORT OF DEFENDANTS' RESPONSE TO UNITED STATES'
MOTION TO STRIKE AFFIRMATIVE DEFENSES

FACTS

United States has correctly set forth the facts attendant to this particular action. With respect to what has happened in this case procedurally as well as what is alleged in the Complaint filed by the United States.

STANDARD

While the United States has correctly cited Brown & Williamson Tobacco Corporation v. United States, 201 F2d 819, 821 (6th Cir. 1953), the United States has failed to add the more recent decision which requires that some prejudice be shown with respect to the existence of a particular affirmative defense. The cases of FTC v. Mazzoni and Sons, Inc., at 2007 US Dist. Lexis 60635, Mark Bryant, et al. v. Ferrellgas, Inc., et al., 2007 US Dist. Lexis 24745, and Barbrasure Beattie and James Sovis v. Centurytel, Inc., 234 F RD 160

(Ed. Mich 2006) all establish that the United States must show some prejudice in allowing affirmative defenses to stand in addition to showing that the affirmative defenses bear no possible relationship to the controversy. Barbrasure Beattie and James Sovis v. Centurytel, Inc. specifically provides that if there are any disputed questions of law or fact, the Motion should be denied. For the reasons set forth below, your Defendants believe that there are disputed issues of law or fact with respect to each and every affirmative defense other than the Rooker-Feldman affirmative defense which the defense concedes is not applicable in this particular matter.

ARGUMENT

Each one of the affirmative defenses raised in this case obviously relate to the underlying claim inasmuch as a large part of the underlying claim relates to an agreement for pretrial diversion in a criminal case arising under Title 18 USC 641. The agreement for pretrial diversion resulted in a **separate** civil case being opened in which a Consent Judgment was issued against Aldo Quadrini. The Consent Judgment that was issued in the separate civil case relates in part to the portion of the Complaint which is now being pursued by the United States of America. Thus, a significant legal question arises as to the effect of the separate civil case and the entry of a Consent Judgment with respect to the debt complained of by the United States.

CONCLUSION

Because Defendants' affirmative defenses bear some relationship to the claim being prosecuted and because the United States has not shown any prejudice whatsoever, the

Motion by the United States to Strike Affirmative Defenses should be denied. Nevertheless, the Defendants concede that the Rooker-Feldman affirmative defense is not applicable in this matter.

Respectfully submitted,

/s/ Gerald L. Decker
GERALD L. DECKER (P 31485)
Attorney for Defendants
42700 Schoenherr Rd., Ste. 3
Sterling Heights, MI 48313
(586) 532-1122
gdeckerlaw@aol.com

Dated: November 21, 2007

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALDO RINALDO QUADRINI and
LOUISE ANNE QUADRINI, d/k/a
LOUISE A. GILLETTE,

Civil No. 2:07-13227
Hon. John Feikens
Magistrate Steven D. Pope

Defendants.

/

PROOF OF SERVICE

I hereby certify that on November 21, 2007 I electronically filed Defendants' Response to United States' Motion to Strike Affirmative Defenses and Brief in Support of Defendants' Response to United States' Motion to Strike Affirmative Defenses with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Julia C. Pidgeon at julia.pidgeon@usdoj.gov

/s/ Cynthia Seelinger
CYNTHIA SEELINGER
42700 Schoenherr Rd., Ste. 3
Sterling Heights, MI 48313
(586) 532-1122
gdeckerlaw@aol.com